THE HON'BLE SRI JUSTICE C.V. RAMULU

Tuesday, 20th June, 2006

W.P.No.9672 of 2005

Between:

P. Ramulamma … Petitioner

And

The District Collector, Nalgonda,

Nalgonda District & 4 others … Respondents

THE HON'BLE SRI JUSTICE C.V. RAMULU

W.P.No.9672 of 2005

ORAL ORDER:

This Writ Petition is filed seeking a Mandamus declaring the Order dated 15-3-2005 in Revision Petition No.CS1/1577/2004 passed by the 1st respondent confirming the Order dated 12-7-2004 passed by the 2nd respondent in Case No.CS1/369/2004 as arbitrary and illegal and consequently to direct the direct the respondents to continue the petitioner as fair price shop dealer of Shop No.2 of Golankonda Village, Alair Mandal, Nalgonda District.

Petitioner is a fair price shop dealer of the above shop. It seems, at about 6.00 a.m. on 1-11-2003, one Smt. Md.Jamalbee, W/o Nabi, Resident of Golankonda village was transporting 50 litres of SKO (kerosene) which is said to be purchased from the petitioner, in a seven-seater Auto. The villagers have caught hold of the same at Vanchagudem, Hamlet of Golankonda and stored in Gram Panchayat Office. On a complaint received from the villagers, the 5th respondent-Mandal Revenue Officer conducted panchanama and seized the kerosene. A notice was issued to the petitioner on 9-1-2004 to show cause as to why her authorization should not be cancelled for the above irregularity. She submitted explanation stating that she has not committed any irregularity and further she has distributed kerosene after making entries in the concerned register and collecting coupons from the card holders. After considering the explanation submitted by the petitioner, the 3rd respondent-Revenue Divisional Officer found that the kerosene seized from Smt.Jamalbee is at the outside of the Fair Price shop. Further, according to the report of the 5th respondent, the dealer distributed 820 litres of kerosene and coupons to this extent have been handed over in his Office. There is no proof of evidence to the extent that the petitioner involved in black marketing. After delivery of kerosene to the card- holders, the dealer is not responsible about the way of usage of the same by the card holders. However, while letting off the petitioner, a penalty of Rs.500/- was imposed against her and she was also warned to be careful in future and thus dropped the charges. However, the 4th respondent-Sarpanch of the village filed an appeal before the 2nd respondent-Joint Collector against the said Order of the Revenue Divisional Officer. The 2nd respondent while disposing of the appeal by his Order dated 12-7-2004, observed as under:

> "3. The main argument of the appellant is that the dealer has committed irregularities in distribution of Essential Commodities many times. The villagers were caught hold of the dealer when diverted E.Cs into black market and let off her with a warning not to commit such mistakes in future and obtained a written endorsement on white paper. But the appellant has not submitted those particular papers to the Court. During the course of case hearing, the counsel for the respondent No.2 asked a copy of such document, but appellant failed to provide copy of the same to the counsel for the respondent No.2. Further, the appellant submitted to the Court that villagers are waiting outside the court since morning to give witness about irregularities committed by the dealer and prayed the Court to allow them. Considering the representation, villagers are permitted into Court and heard their explanations. The villagers are contended that they came from far away place burdening expenditure to their problems with the FP Shop dealer No.II of village before the Court. They stated that the FP shop dealer is habituated to diversion of essential commodities into black market. Earlier also, they have caught hold the

dealer twice diverting ECs into black market and let off her with a warning to be careful in future, obtained a written agreement not to commit any mistakes. Unfortunately, the dealer has committed irregularity repeatedly, diverting SKO into black market and prayed the Court to remove the FP shop dealer and to appoint a new person."

Ultimately, the 2nd respondent allowed the appeal and suspended the order of restoration of dealership of the petitioner. Aggrieved by this order, the petitioner filed a revision before the 1st respondent-District Collector. The revisional authority, after considering the order passed by the 2nd respondent, confirmed the same. Challenging the said order, the present Writ Petition is filed

Heard both sides.

The only allegation against the petitioner was that 50 litres of Kerosene was found in the possession of Smt. Md.Jamalbee and she was caught hold of by the villagers. In fact, in the enquiry conducted by the 5th respondent, it was revealed that the dealer distributed 820 litres of kerosene and coupons to that extent were handed over to him and there was no proof of evidence to show that the petitioner involved in black-marketing the kerosene. However, the 3rd respondent imposed a penalty of Rs.500/-.

Be that as it may, the 4th respondent-Sarpanch, who was not a party to the Proceedings before the 3rd respondent-Revenue Divisional Officer, filed an appeal before the 2nd respondent-Joint Collector against the Order dated 9-2-2004 passed by the 3rd respondent. Respondent No.2-appellate authority observed that the villagers caught hold of the petitioner when she was diverting essential commodities into black market and let off her with a warning not to commit such mistakes in future and obtained a written endorsement on a white paper. However, such white paper purported to have been signed by the petitioner did not see the light of the day. Further, during the course of hearing of the appeal by the 2nd respondent, the counsel for the 4th respondent herein produced the villagers, who were waiting outside the Court of the 2nd respondent. The villagers were called by the appellate authority and after hearing them, who, according to the petitioner, were politically motivated, it came to the conclusion that the petitioner has committed irregularities in distribution of essential commodities and also diverted the same to black market. Absolutely, there is no oral or documentary evidence in this regard, except the

Grama Sabha alleged to have been conducted by the appellate authority while hearing the appeal, which, it is not supposed to do. Further, the revisional authority committed a mistake in relying on the observations made by the appellate authority, which are not supported by any oral or documentary evidence. The conclusions reached by the 2nd respondent as confirmed by the 1st respondent, which are not supported by any cogent and acceptable evidence and procedure known to law, are illegal. Therefore, I am of the considered opinion that the Order passed by the appellate authority dated 12-7-2004 as confirmed by the 1st respondent-revisional authority on 15-3-2005 is contrary to the evidence on record and suffers from procedural irregularities, apart from the fact that the appellate authority has adopted a procedure, which is not known to law.

Therefore, the impugned Orders are liable to be set aside and are accordingly set aside. Consequently, the order passed by the 3rd respondent-Revenue Divisional Officer on 9-2-2004 is upheld and confirmed. Respondent No.3 shall restore the authorization of the petitioner's fair price shop forthwith.

Accordingly, the Writ Petition is allowed. No order as to costs.

20-6-2006

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